D.B.CIVIL SPECIAL APPEAL NO. 128/2006
State of Rajathan & anr. v. J.K.Udaipur Udhyog Ltd. & anr.

Date of order : 13.11.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri N.M.Lodha, Addl. Advocate General

The dispute in this special appeal arising from S.B.Civil Writ Petition no. 1647/1997 relates to interest on the arrears of royalty in respect of mining lease.

Brief facts of the case are that the respondent was granted mining lease in respect of limestone. The rate of royalty at the relevant time was Rs. 10/- per metric tonne. It was raised to Rs. 25/- per metric tonne vide notification dated 17.2.1992. The respondent challenged the enhancement in this Court in S.B.Civil Writ Petition no. 3871/1993. By order dated 10.8.1993 while staying recovery of the amount a Bench of this Court directed that in case writ petition is dismissed the respondent would be liable to pay interest @ 18% per annum. The writ petition was ultimately dismissed on 1.10.1996. The respondent paid the sum of Rs. 2,89,67,920/- as arrears of royalty. A demand was raised for the interest on the delayed payment to the tune of Rs. 1,12,76,964/- on 12.3.1997. The respondent again approached this Court in S.B.Civil Writ Petition no. 1647/1997. By order dated

11.8.2005 impugned in this appeal the respondent was held liable to pay interest @ 12% per annum. The effect of the order is that instead of Rs. 56 lacs and odd being the amount of interest calculated @ 18% per annum on the sum of Rs. 2,89,67,920/-, the respondent is liable to pay Rs. 40 lacs only. Feeling aggrieved the State has come in appeal.

Shri N.M.Lodha, Additional Advocate General appearing for the appellant submitted that the respondent having secured stay of the realisation of the amount of royalty on the condition that in the event of failure in the writ petition it will pay interest on the delayed payment @ 18% per annum it can not make any grievance of the demand calculated @ 18% per annum. He submitted that similar lessees having paid the enhanced royalty under notification dated 17.2.1992 on time, the impugned order holding the respondent liable to interest @ 12% per annum would result in discrimination and unjust enrichment to the respondent.

As a general proposition the submissions no doubt are well founded but in the facts of the case it would be difficult to accept the same. From the order it is manifest, and there is no dispute about it, that in course of hearing of the writ petition, the Advocate General appearing for the State had agreed that the rate of interest may be 12% per annum. The relevant part of the order dated 11.8.2005

runs as under :

> "On the other hand, the learned Advocate General submits that the State Govt. is entitled for the rate of interest @ 18% but even looking to the present trend of Hon'ble Supreme Court, Govt. Must at least get interest @ 12% p.a., on the delayed payment of the difference royalty amount as has been awarded by Hon'ble Supreme Court in South Eastern Coal Field's case (supra)."

Shri N.M.Lodha submitted that the Advocate General apparently took the stand in the light of decisions of the Supreme Court in the cases of Saurashtra Cement & Chemical Industries Ltd. & anr. v. Union of India & anr., (2001) 1 SCC 91 and other South Eastern Coalfields Ltd. v. State of M.P. & ors., (2003) 8 SCC 648 wherein the rate of interest on the unpaid amount of royalty was reduced to 9% per annum and 12% per annum respectively but in the instant case, the respondent having obtained stay on condition to pay interest @ 18% per annum, it is not open to them to make any grievance of the rate.

It is not in dispute that rate of interest @ 18% per annum was fixed by the Court and though it was a condition of stay and in the ordinary course the respondent became liable to pay interest at that rate on the delayed payment after dismissal of the writ petition, in view of the concession by the Advocate General, as we are inclined

to interpret the order, we do not find any substance in the contention of Shri Lodha. As a matter of fact, the order having been passed with consent of the Advocate General appearing for the State we have grave doubts about maintainability of this appeal. Under sub-section (3) of section 96 of the Code of Civil Procedure, appeal does not lie from a decree passed by the Court with the consent of the parties. The provisions of Code of Civil Procedure may not be strictly applicable but there can not be any doubt that the provision is based on public policy and therefore, where any order is passed on concession or with the consent of the parties, we do not think any other view can be taken.

In the above view of the matter, we find no merit in this appeal which is accordingly dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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